

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Muriel Moser et al.

Application No.: 10/072,425

Confirmation No.: 4226

Filed: February 7, 2002

Art Unit: 1644

For: DENDRITIC-LIKE CELL/TUMOR CELL
HYBRIDS AND HYBRIDOMAS FOR
INDUCING AN ANTI-TUMOR RESPONSE

Examiner: G. R. Ewoldt

PETITION TO WITHDRAW FINALITY

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

Applicant hereby requests withdrawal of the finality of the office action mailed April 21, 2009, for the above mentioned Application on the grounds that the office action was erroneously labeled as a final office action.

The office action mailed April 21, 2009, was in response to an RCE filed Jan. 26, 2009, with a claim set identical to a claim set which was not entered in an after final amendment filed by Applicant on September 22, 2008, because, in part, it would raise new issues requiring further consideration and search according to an advisory action mailed December 3, 2008.

Applicant is filing this petition to withdraw finality of the office action mailed April 21, 2009, because according to section 706.07(b) of the Manual of Patent Examining Procedure for making a first action final in a continuing application, it is improper to make

an office action final when the claims filed in the RCE were not entered in the an after final amendment because they raise new issues that required further consideration and search. Specifically, MPEP 706.07 states:

“However, it would not be proper to make final a first Office action in a continuing or substitute application >or an RCE< where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised”.

Applicant notes that the claims presented in the RCE filed January 26, 2009, are identical to the claims filed in an after-final reply on September 22, 2008, which were not entered in part because the Examiner stated in an Advisory Action mailed December 3, 2008, that “the proposed amendment would require the search and consideration of methods employing allogeneic DCs where the claims have been previously rejected as they recite methods employing autologous DCs”.

Thus, Applicant submits that the finality of the office action mailed April 21, 2009, is improper according to MPEP 706.07, and requests that the finality of said office action be withdrawn.

This petition to withdraw finality is accompanied by a petition to revive the application. Applicant notes said office action mailed April 21, 2009, lists on the front page that it was a nonfinal office action. From April 2009 until at least November 2009, PAIR also indicated that the office action was a non final office action. However, the last page of the office action indicated the office action was final.

During an in-person interview with the Examiner on October 20, 2009, the rejections presented in the April 21, 2009 office action were discussed and proposed claim amendments were presented to the Examiner. No mention of the office action being final was made.

Applicant filed a response to nonfinal office action on October 21, 2009, followed by a supplementary response on October 23, 2009, in which signed affidavits were filed.

After receiving an advisory action on January 8, 2010, Applicant called the SPE of the instant art unit for a status check of the application, at which time the SPE indicated that PAIR had only recently been changed to indicate that the office action mailed April 21, 2009, was a final office action.

Conclusion

Applicant submits that the finality of the office action mailed April 21, 2009, is improper according to MPEP 706.07, and was made in error. In view of the above facts, Applicant did not intentionally or mistakenly omit to file a notice of Appeal by October 21, 2009.

Dated: March 17, 2010

Respectfully submitted,

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